



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,894	06/01/2006	Katri Keski-Nisula	LMI001.820714	7027
21831 7590 11/13/2008 WOLF BLOCK SCHORR AND SOLIS-COHEN LLP 250 PARK AVENUE NEW YORK, NY 10177			EXAMINER PATEL, YOGESH P	
			ART UNIT 3732	PAPER NUMBER
			NOTIFICATION DATE 11/13/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO@WOLFBLOCK.COM

Office Action Summary	Application No. 10/563,894	Applicant(s) KESKI-NISULA ET AL.	
	Examiner YOGESH PATEL	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/30/08 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 6, 9, 10, 13, 14, 15-18, 20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4, the phrase "like" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 6 it is not clear what the term "their" encompasses.

Regarding claims 9-10, 17, it is not clear what "its" encompasses.

Regarding claims 13, 18, 20, 21 it is not clear what is meant by "mentioned."

Regarding claim 14 it is not clear what is meant by "in which case."

Regarding claim 15 it is not clear what "it" encompasses.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 10, 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen (4,784,605) in view of Cathcart et al. (2,966,908)

Bergersen discloses an orthodontic device (as in previous rejection) for guiding the occlusion of an individual, the device including a generally U-shaped arch made of flexible material (col. 3, lines 13-16) and that has a lower surface on the lower jaw side and an upper surface on the upper jaw side, and in both of which there are concaves for receiving the individual's teeth (col. 2, lines 35-40), the bottoms of the concaves forming an isthmus which separates the concaves from one another, wherein the isthmus includes blanks intended for individual teeth and uniform, continuous recesses (e.g. trough) for at least two teeth to guide the teeth in the desired direction.

Bergersen fails to disclose a lower wing reaching the immediate proximity of the mouth cavity, extending lower than the corresponding outer wall, shape of lower arch, reducing the at point of the ligament of the tongue and outer wall on the upper jaw side surface partially continued upwards.

Cathcart teaches a mouth protector (fig. 9) including a lower wing 7 reaching the immediate proximity of the mouth cavity, extending lower than the corresponding outer wall, shape of lower arch, reducing the at point of the ligament of the tongue and outer wall on the upper jaw side surface partially continued upwards. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Bergersen by providing the lower wing as claimed as taught by Cathcart in order to provide full protection of teeth of a user.

With respect to the specifics of the lower wing, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to make the device in a specific range as claimed, since it has been held that discovering the optimum or workable ranges involves only routine skills in the art. *In re Aller*, 105 USPQ 233. Furthermore, such range would vary among users (e.g. children vs. adults), thus applying appropriate range to the device would be obvious to one having ordinary skills in the art.

Claims 7-9 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergersen in view of Cathcart et al. as applied to claim 1 above, and further in view of Bergersen (5,645,420).

Bergersen'605/Cathcart disclose all elements of the claimed invention, and further disclose different size ranges (Bergersen, col. 2, lines 38-40) except for a thickness of the isthmus and the dimensions of the device.

Bergersen '420 teaches the variation of the isthmus thickness for the correction of the overbite can be accomplished either by reducing the thickness in the area of the

Art Unit: 3732

posterior teeth or increasing the thickness in the area of the anterior teeth (col. 6-7). Similarly, by increasing the thickness of the isthmus in the posterior region relative to the anterior region, an open bite can be corrected. The variation in thickness of the isthmus occurs in step because the thickness is different in anterior and posterior portions. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Bergersen/Cathcart by providing a varying thickness of the isthmus of the device as taught by Bergersen'420 in order to correct open bite/overbite problems (col. 6, lines 49-67 and col. 7, lines 19-42). Regarding the dimensions of the appliance, the dental structure of users (e.g. dentition) varies in sizes depending on particular users' age. For example, if the user is 15 years old, then the length of the compartment would be lesser than the compartment length for user that is older than specified age and vice versa. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to modify Bergersen/Cathcart by providing the appliance in variety of sizes (e.g. as claimed) so that large group of users may benefit from correcting open-bite tendencies and tongue thrust problems and/or to protect teeth using the appliance.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ross (2,833,278) and Cathcart (3,333,582).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOGESH PATEL whose telephone number is (571)270-3646. The examiner can normally be reached on 8:00 to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Y. P./
Examiner, Art Unit 3732

/Ralph A. Lewis/
Primary Examiner, Art Unit 3732